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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,054	12/05/2003	Mark S. Grendahl	G353.12-0008	9250

164 7590 09/03/2004

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EXAMINER

RAMIREZ, RAMON O

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,054

Applicant(s)

GRENDahl, MARK S.

Examiner

RAMON O. RAMIREZ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-9 and 15-20 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/5/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Detailed Action

This is the first Office Action corresponding to original filing . The application contains 23 claims.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, and 15-23 are drawn to a cable racking and method of using, classified in class 248, subclass 68.1.
- II. Claims 11-14, drawn to template, classified in class 33, subclass 566.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as a holder for cables, not as tool for marking holes. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Davin R. Fairbairn on August 31, 2004 a provisional election was made without traverse to prosecute the invention of the cable rack and method, claims 1-10, and 15-23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-14 are withdrawn from further

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consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

Receipt is acknowledged of Information Disclosure Statement, which has been reviewed by the Examiner but for the non patent information (the advertisement) which was not found in the application.

Specification

The disclosure is objected to because of the following informalities: on page 10, line 13, "Fig 6" may appear to be wrong since Fig 6 does not show what is stated therein.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Larson (Pat No 3,737,131).

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The patent to Larson shows a rack device comprising a shelf (30) having a plurality of holes (31), and a brace (17) perpendicular attached to the shelf and being secured to a surface (10). The holes shown by Larson are fully capable of receiving multiple sizes conduits.

Claims 15- 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Larson (Pat No 2,815,863).

The patent to Larson'863 shows a rack comprising a shelf a shelf having a plurality of holes, a brace perpendicular attached to said shelf, and having mounting apertures for receiving fasteners securing the rack to a surface (please refer to Fig 3). The device shown by Larson'863 can be used following the recited method steps. As to claim 19, the holes in Larson can be used as a marker means.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larson in view of Daoud (Pat No 6,278,061).

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The patent to Daoud shows the use of rigid tab (20 but also resili-net since it yields when the conduit is pushed) for securing a conduit into an opening. It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Larson with a tab as shown by Daoud to increase the fitting grip of the conduit.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Larson's 131 in view of Larson's 863. It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Larson's 131 with mounting apertures on the brace as shown by Larson's 863 to secure the device to a solid surface.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Larson's 863. The device shown by Larson's 863 can be attached to any desired surface.

Allowable Subject Matter

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 21-23 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hickey (5,971,329), Kowzan (6,143,970), Shillings

(2004/0118982 A1) and Vantouroux (2004/0124320 A1) show racking devices comprising shelf with openings and a brace.

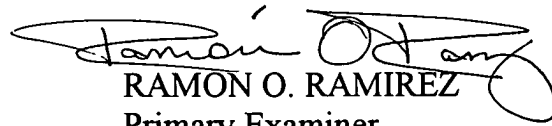
Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is (703) 308-0748. The examiner can normally be reached on MONDAY-FRIDAY, IST FRIDAY OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LESLIE BRAUN can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A shortened period for response to this Office Action expires **THREE MONTHS**
from the mailing date of this action.


RAMON O. RAMIREZ
Primary Examiner
Art Unit 3632

ROR
September 1, 2004